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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

In re:

Case No. 12-17761-B-7
 Chapter 7

AUDRA KIRKMAN,

Debtor(s).

AUGUST B. LANDIS,
 Acting United States Trustee,

A.P. No. 12-01154-B

Plaintiff,

v.

Date: November 15, 2012

Time: 10:30 a.m.

Place: U. S. Bankruptcy Court

2500 Tulare Street, Courtroom 12
 Fresno, CA 93721

AUDRA KIRKMAN,

Defendant(s)

Judge: Honorable W. Richard Lee

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
 REGARDING UNITED STATES TRUSTEE'S COMPLAINT TO (1) TO DISMISS
 CHAPTER 7 CASE WITH PREJUDICE AND (2) TO ENJOIN DEBTORS
 FROM FILING BANKRUPTCY FOR TWO YEARS**

On November 15, 2012, the Court's Status Conference came on for hearing on the United States Trustee's Complaint to (1) to Dismiss Chapter 7 Case with Prejudice and (2) to Enjoin Debtors from Filing Bankruptcy for Two Years. Mark L. Pope, Esq. appeared for the United States Trustee. Having entered the default of the Defendants and reviewed the unopposed pleadings of the United States Trustee, the Court now issues the following findings of fact and conclusions of law.

Finding of Facts

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 EASTERN DISTRICT OF CALIFORNIA
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1 1. On January 11, 2012, Audra Marie Kirkman (“the Defendant”) filed a *pro se* Chapter
2 7 bankruptcy, Case No. 12-10231-B-7 (“Case No. 1”) in the Eastern District of California.

3 2. On January 23, 2012, the case was dismissed because the Defendant failed to file
4 documents.

5 3. On March 12, 2012, the Defendant filed a *pro se* chapter 7 bankruptcy, Case No. 12-
6 12129-A-7 in the Eastern District of California.

7 4. On July 16, 2012, the case was dismissed because the Defendant failed to appear at
8 the meeting of creditors.

9 5. On August 8, 2012, the Defendant filed a *pro se* chapter 7 bankruptcy, Case No. 12-
10 16881-B-7 in the Eastern District of California.

11 6. On August 20, 2012, the case was dismissed because the Defendant failed to file
12 documents.

13 7. On September 10, 2012 the Defendant filed the Current Case, Case No. 12-17761-B-
14 7, in the Eastern District of California.

15 8. On the second page of the petition under “All Prior Bankruptcy Cases Filed Within
16 Last Eight Years” the Defendant left the block blank.

17 9. The Defendant failed to file Schedule and Statements.

18 10. On September 28, 2012, the Court dismissed this case for failure to file documents.

19 **Legal Conclusions**

20 11. Under 11 U.S.C. §§ 349(a) and 707(b)(3)(A), the court may dismiss a case with
21 prejudice to the discharge of existing debts on grounds of bad faith, which includes, but is not
22 limited to (a) misrepresentation of facts in the petition or plan, (b) unfair manipulation of the
23 Bankruptcy Code, (c) the debtors’ history of filings and dismissals, and (d) timing petitions to
24 frustrate state court actions.

25 12. Defendant’s failure to disclose prior cases and serial filings constitute bad faith and
26 warrant dismissal of the Current Case with a bar to refiling.

27 13. Defendant, is serial bankruptcy filer who has abused the bankruptcy system since
28 January 12, 2012.

1 14. This year, the Court has dismissed 4 cases filed by the Defendant.

2 15. Defendant knowingly and fraudulently made false oaths in her petition when she
3 failed to disclose Case No. 1-3 as prior cases.

4 16. Defendant's pattern of successive filings and false oaths is evidence of her willful
5 failure to prosecute this cases and abide by the Bankruptcy Code and Rules.

6 17. Defendant's sole purpose in filing her successive cases appears to be to invoke the
7 automatic stay to hinder and delay her creditors.

8 18. Defendant's behavior constitutes abuse of the bankruptcy system, and without an
9 order barring refiling, Defendant's creditors are at risk of further serial filings and abuse.

10 19. Defendant's failure to perform duties imposed by the Bankruptcy Code constitutes
11 willful behavior sufficient to impose an 180-day bar against refiling pursuant to 11 U.S.C. §
12 109(g)(1).

13 20. However, a 180-day bar is insufficient to protect Defendant's creditors from
14 Defendant who has been in bankruptcy since January 2012 without any meaningful payment to
15 her creditors.

16 21. Plaintiff has no adequate remedy at law. Defendant's actions and omissions hinder
17 the administration of justice and cause creditors and the bankruptcy system irreparable harm.
18 Defendant will continue to abuse the bankruptcy process unless this court issues an injunction
19 barring Defendant from filing another bankruptcy case for two years.

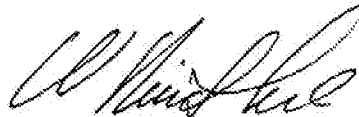
20 **Conclusion**

21 For the foregoing reasons, the Court concludes the following relief should be granted:

- 22 1. The Defendant shall be barred from filing another bankruptcy petition within two
23 years from the date of the dismissal, without leave of court.
- 24 2. Leave of court as referenced in paragraph 1, if any, may be sought by an *ex parte*
25 order from the bankruptcy court upon a showing that (1) there has been a material
26 change in circumstances, (2) the filing fee is paid in full, (3) complete schedules and
27 statements are filed with the voluntary petition, and (4) reasonable assurances are
28 made that the Defendant will appear at the section 341 meeting.

1 A separate order shall be entered.
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6 **Dated:** November 21, 2012
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10 **W. Richard Lee**
11 **United States Bankruptcy Judge**

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